

# FINAL BILL REPORT

## SHB 1749

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Synopsis as Enacted

**Brief Description:** Regulating the business practices of mortgage brokers for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

**Sponsors:** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Bailey and Kirby).

**House Committee on Financial Institutions & Insurance**  
**House Committee on General Government Appropriations**  
**Senate Committee on Financial Institutions, Housing & Insurance**

### **Background:**

The Department of Financial Institutions (DFI) licenses mortgage brokers and loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties for mortgage brokers and loan originators.

The DFI currently requires all mortgage brokers and loan originators to file license applications through the Nationwide Mortgage Licensing System (NMLS). The NMLS was created in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The NMLS began operations in January of 2008. According to the NMLS, 42 states are current members or have signed a Statement of Intent regarding their participation in the NMLS.

On July 30, 2008, President Bush signed House Resolution 3221 (P.L. 110-289). Title V of House Resolution 3221 is referred to as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Under the SAFE Act, all states must have a system of licensing in place for residential mortgage loan originators by August 1, 2009, that meets national definitions and minimum standards, including:

- criminal history and credit background checks;
- pre-licensure education;
- pre-licensure testing;
- continuing education;
- net worth, surety bond or recovery fund; and

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

The Secretary of the U.S. Department of Housing and Urban Development is required to establish and maintain a backup licensing and registration system for loan originators operating in a state that:

- does not have a licensing and registering system for loan originators that meets the requirements of the SAFE Act; or
- does not participate in the NMLS&R.

### **Summary:**

The definition of "loan originator" is modified. Additionally, new definitions are created.

Applications for a mortgage broker or a mortgage loan originator license must be made through the NMLS&R. An application for a mortgage broker or a mortgage loan originator license must include fingerprints and other specific background information. The Director of the Department of Financial Institutions (Director) may adopt rules regarding licensing. Applicants must use a form prescribed by the Director. The Director may establish contracts with the NMLS&R to collect and maintain records and fees related to licensees.

An applicant must:

- complete minimum pre-licensing education requirements approved and administered by the NMLS&R; and
- pass a test developed by the NMLS&R and administered by a provider approved by the NMLS&R.

A mortgage loan originator licensee must meet minimum continuing education requirements approved and administered by the NMLS&R. The Director must establish other standards by rule for license renewal.

The Director must establish a process for mortgage loan originators to challenge the information entered into the NMLS&R by the Director.

A mortgage broker must maintain a minimum bond amount. The Director may establish a range of bond amounts based on the dollar amount of loans originated by the licensee. If the Director determines that the required bonds are not reasonably available, the Director must waive that requirement. The Mortgage Recovery Fund Account (MRFA) is created and the Director is authorized to charge fees to fund the MRFA. A person may only receive reimbursement from the MRFA after a court has determined the actual damages caused by the licensee. The Director may adopt rules regarding:

- the procedure for recovery from the MRFA;
- the amount each mortgage broker must pay for deposit in the MRFA; and
- the amount necessary to administer the MRFA.

Each mortgage loan originator must register with and maintain a unique identifier.

The information and materials used for the NMLS&R are subject to existing state and federal privacy laws even after being provided to the NMLS&R. Information may be shared by the Director with other governmental agencies and regulatory associations without a loss of any privilege or confidentiality under the law.

Specific entities and their employees are exempt from the MBPA.

**Votes on Final Passage:**

House	97	0	
Senate	48	0	(Senate amended)
House	97	0	(House concurred)

**Effective:** July 26, 2009  
January 1, 2010 (Sections 4, 6-9, 11, 12, 14, and 17)